

1 JUDGE GONZALEZ: And obviously the Bureau and
2 whoever else remains a party will have a right to object to
3 any change in the --

4 MR. EMMONS: Yes. Yes.

5 JUDGE GONZALEZ: -- in that's --

6 MR. EMMONS: We -- we'll --

7 JUDGE GONZALEZ: -- in that portion.

8 MR. EMMONS: We'll raise it -- I would propose that
9 we raise it at the outset of Mr. Nelson's testimony. When he
10 gets on the stand we'll, we'll ask him if --

11 JUDGE GONZALEZ: If there are any changes he wants
12 to make in this exhibit?

13 MR. EMMONS: Yes.

14 JUDGE GONZALEZ: Sure. That, that would be the best
15 way to proceed, then we can entertain objections if there are
16 any at that time. All right. Any further objections?

17 MR. HARDMAN: Just for clarification, Your Honor.
18 The part that's left in starts with "I circulated..."?

19 JUDGE GONZALEZ: Right. Down to the end of the
20 paragraph.

21 MR. HARDMAN: Okay.

22 JUDGE GONZALEZ: Any further objection?

23 MR. WEBER: Yes, Your Honor.

24 JUDGE GONZALEZ: And I realize we've been going
25 about two-and-a-half hours. If anyone wants to be excused or

1 if you want a 15-minute break, I -- if anybody wants to leave
2 the room temporarily, please by all means feel free to do so.

3

4 We'll continue then. Further objections?

5 MR. WEBER: Yes. I would move to strike paragraph
6 45 as irrelevant.

7 JUDGE GONZALEZ: 45? As irrelevant?

8 MR. WEBER: Yes.

9 MR. EMMONS: Your Honor, I wonder if I could ask Mr.
10 Weber to clarify his -- in what respect he deems it irrelevant
11 or whether there are different parts of it that -- as to which
12 he has different questions?

13 JUDGE GONZALEZ: Mr. Weber?

14 MR. WEBER: Again, I, I fail to see how this is
15 addressing any points on the Bureau's Bill of Particulars.
16 There, there's no issue in the Bill of Particulars which ever
17 states that USCC did try to exercise the supermajority provi-
18 sions. While the Bill of Particulars does question certain
19 statements made about the amending of the Joint Venture
20 Agreement, I, I just -- I don't see how this paragraph gets us
21 any -- gets, gets us anywhere.

22 MR. EMMONS: To the --

23 MR. SCHNEIDER: Oh, go ahead.

24 MR. EMMONS: I was going to say to the extent that
25 there, there are questions about the, the statements made

1 about the amendment to the Joint Venture Agreement, this
2 represents Mr. Nelson's view of how it happened. And that
3 this can be -- serve as the basis for finding why Mr. Nelson
4 believed any statements he made about the amendment to the
5 Joint Venture Agreement were accurate -- or if not accurate,
6 certainly weren't the intention -- weren't the subject of any
7 intention on his part to mislead the Commission.

8 JUDGE GONZALEZ: Mr. Weber? Does that remove your
9 objection, that explanation?

10 MR. WEBER: Yes. On reflection, I, I will withdraw
11 the objection.

12 JUDGE GONZALEZ: Any further objections?

13 MR. WEBER: I believe so, but let me double check.
14 No, Your Honor. I have no more objections.

15 JUDGE GONZALEZ: Mr. Hardman, do you have any
16 objections?

17 MR. HARDMAN: Yes, I do, Your Honor. I'll start at
18 paragraph 11.

19 JUDGE GONZALEZ: All right. The entire paragraph?

20 MR. HARDMAN: No, Your Honor. The -- and I'm trying
21 to count right -- the last three sentences. This, this
22 witness -- and it -- this may --

23 JUDGE GONZALEZ: I'm sorry. If you'll just give --
24 indicate what, what the sentence --

25 MR. HARDMAN: I'm sorry.

1 JUDGE GONZALEZ: -- starts with?

2 MR. HARDMAN: At the bottom of page 5, the last
3 sentence --

4 JUDGE GONZALEZ: "As far as..."?

5 MR. HARDMAN: -- that starts "As far as I know..."

6 JUDGE GONZALEZ: To the end of the paragraph.

7 MR. HARDMAN: -- to the rest of the -- as far as
8 this witness is concerned, this is largely a question of
9 confidence of his testimony, although it does contain flavors
10 of, of reargument. This witness started the paragraph saying
11 he had no significant involvement in the acquisition and
12 therefore it was certainly not competent for him to testify
13 anything about what U.S. Cellular did or didn't do as, as part
14 of that negotiation and acquisition.

15 JUDGE GONZALEZ: So, in effect, it's a competency
16 objection?

17 MR. HARDMAN: That's the thrust of the objection.

18 MR. SCHNEIDER: There -- when, when he's done, Your
19 Honor, I'll respond. I'm sorry.

20 JUDGE GONZALEZ: Sir?

21 MR. SCHNEIDER: Okay. First of all, he, he, he did
22 say -- he didn't say he had no involvement, he had no signifi-
23 cant involvement, and then he explains a little bit about what
24 he did. The, the other point is that there's an acquisition
25 implies up until the time when you, you acquire, you do a

1 deal. Then thereafter he may have been more involved, in the
2 sentence, "United States Cellular made no effort to
3 renegotiate anything in LaStar Joint Venture Agreement when it
4 acquired its interest in LaStar" is something he would have
5 personal knowledge on based upon his being brought into the
6 picture to some greater extent at the time it, it acquired
7 LaStar.

8 The second sentence, "United States Cellular stepped
9 into the shoes of its predecessor under the agreement" is
10 something he would have direct knowledge of to the extent he
11 took -- he became involved, to whatever extent, at the time it
12 acquired the interest.

13 And at the time he -- the third sentence, he's
14 talking about something that very likely could have or would
15 have happened at the time he was brought into it. These three
16 sentences don't relate just to the, the involvement in the
17 acquisition. To the extent that, that Mr. Hardman wants to
18 cross-examine him on the extent of his personal knowledge or
19 cross-examine other witnesses on whether or not these sorts of
20 things occurred, he'll be able to do so. But the mere fact
21 that he wasn't very involved in the actual acquisition doesn't
22 mean he wouldn't have personal knowledge of what it did once
23 it acquired the interest and "when it acquired the interest,"
24 as the first sentence says, and what he felt it effectively
25 did at the time it, it acquired the interest.

1 JUDGE GONZALEZ: I agree. I, I think he can be
2 cross-examined with respect to the extent of his knowledge of
3 this matter. Any further objections?

4 MR. HARDMAN: All right. On paragraph 12, the first
5 full sentence, the last phrase, "majority partner in LaStar."
6 Again, it's the argument it's conclusory and it's, it's not
7 necessary to the sentence.

8 MR. EMMONS: Well, Your Honor, I'll be happy to
9 withdraw that if Mr. Hardman will stipulate that SJI was the
10 majority partner in LaStar and that it was Mr. Nelson's under-
11 standing, by the way, that SJI was the majority partner in, in
12 LaStar.

13 MR. HARDMAN: Why would I stipulate to that?

14 MR. EMMONS: Well, if you won't stipulate -- if, if
15 counsel won't stipulate, Your Honor, then I think we --

16 MR. HARDMAN: Your Honor, this does not say "I
17 believe that..." This says as a statement of fact "SJI was
18 our majority partner in LaStar" and that's part of the problem
19 that we're having, a restatement of matters as fact --

20 MR. EMMONS: But this -- Your Honor, I -- the intent
21 of that, Your Honor -- we can re-form that as well, if it
22 would meet counsel's objection -- is to express Mr. Nelson's
23 understanding that LaStar was a majority partner, and we can
24 have Mr. Nelson add in the words "whom I understood" or "which
25 I understood was our majority partner in LaStar" if that

1 resolves the objection. That's certainly the intent, I think,
2 of the, of the sentence as it's now stated.

3 MR. HARDMAN: And on that particular point I have
4 the identical objection in paragraph 15, so if counsel would
5 agree to do --

6 JUDGE GONZALEZ: I'm sorry. Which, which --

7 MR. HARDMAN: Paragraph 15 on page --

8 JUDGE GONZALEZ: So, in other words, we're going to
9 delay, we're going to delay also a final ruling on that till
10 we make the amendment through the witness? Is that correct?
11 With respect to that first sentence?

12 MR. EMMONS: That's what I would --

13 JUDGE GONZALEZ: All right.

14 MR. EMMONS: -- recommend, Your Honor.

15 JUDGE GONZALEZ: You'll be able to raise your
16 objection again, Mr. Hardman, if you --

17 MR. HARDMAN: Thank you.

18 JUDGE GONZALEZ: -- after the sentence has been
19 amended.

20 MR. EMMONS: I'll talk to Mr. Hardman off the
21 record, but I thought I just understood him essentially to say
22 that if we make that re-formation that would be acceptable to
23 him if --

24 MR. HARDMAN: That's, that's correct. I think --

25 JUDGE GONZALEZ: As a --

1 MR. HARDMAN: -- there would probably not be a need
2 for a ruling --

3 JUDGE GONZALEZ: All right. Fine. Fine. Then
4 paragraph 15? Is it paragraph 15, did you say?

5 MR. HARDMAN: Yes. It's, it's the same point. It's
6 a statement about SJI being the majority, 51 percent of --

7 JUDGE GONZALEZ: Could you point us to that --

8 MR. HARDMAN: The middle of the paragraph.

9 JUDGE GONZALEZ: Oh, I see.

10 MR. HARDMAN: The sentence begins --

11 JUDGE GONZALEZ: Yeah, I see.

12 MR. SCHNEIDER: -- "operating as one of the
13 principals..."

14 JUDGE GONZALEZ: I see. So, in other words, we'll
15 go ahead and, and make the -- you propose the same change with
16 --

17 MR. EMMONS: Yes.

18 JUDGE GONZALEZ: -- respect to that?

19 MR. EMMONS: Yes, Your Honor.

20 MR. SCHNEIDER: From "the changes which I understood
21 to be" is being inserted "for the majority."

22 MR. EMMONS: Essentially. So, we'll -- we can work
23 on that. We don't need to waste the Court's time right now on
24 that. But -- perhaps we can work with Mr. Hardman on it.

25 JUDGE GONZALEZ: All right. Any further objection,

1 Mr. Hardman?

2 MR. HARDMAN: Yes, Your Honor. A similar objection
3 in paragraph 16, although in, in the first sentence the phrase
4 that, at the end of the sentence, that reads, "and therefore
5 majority control of the committee" which is -- it's a legal
6 conclusion and it's not stated as a, as a -- something that
7 was his understanding.

8 MR. EMMONS: Your Honor, we'll make the same re-
9 formation there.

10 JUDGE GONZALEZ: All right. Is that agreeable, Mr.
11 Hardman?

12 MR. HARDMAN: Yes, it is.

13 JUDGE GONZALEZ: All right. Any further objections?

14 MR. HARDMAN: Yes, Your Honor. And I'm not sure
15 that this -- I'm sorry. The reference is paragraph 18, the
16 first two sentences of that paragraph. Again -- and I'm not
17 sure that it can be cured in quite the same way, because these
18 are more clearly statements of, of fact, statements of legal
19 conclusion, for which this witness, who is certainly not
20 competent to testify. I mean, he could not possibly have
21 known that because SJI owned 50 percent this gave SJI control
22 of LaStar.

23 MR. EMMONS: Well, Your Honor, he could have under-
24 stood it and, and we could make that re-formation.

25 MR. HARDMAN: Well --

1 MR. EMMONS: It's, it's a statement of his state of
2 mind.

3 MR. HARDMAN: Your Honor, it's not as clear to me
4 that it can be re-formed in the same way that the other --

5 JUDGE GONZALEZ: Yeah, I, I would -- am inclined to
6 agree -- I do agree, Mr. Hardman. I, I think those, those two
7 sentences should be stricken. Any objections?

8 MR. SCHNEIDER: What about, Your Honor, just leaving
9 the part that says, "I knew that SJI owned 51 percent of
10 LaStar while United States Cellular owned only 49 percent"?
11 That, that doesn't have -- that sentence --

12 JUDGE GONZALEZ: No. No. Admittedly --

13 MR. SCHNEIDER: It's the clause "this gave SJI
14 control over LaStar" that is counsel's problem and --

15 JUDGE GONZALEZ: Would you have any objection to
16 just leaving that portion of the sentence in, Mr. Hardman? It
17 seems to be just a statement of fact.

18 MR. HARDMAN: I agree.

19 JUDGE GONZALEZ: All right. Well, then we'll --

20 MR. EMMONS: Your Honor, I want to note that I
21 don't, I don't yield to re-forming the sentence in that way.
22 I just --

23 MR. SCHNEIDER: No --

24 JUDGE GONZALEZ: Oh. I'm sorry.

25 MR. EMMONS: I understand your ruling.

1 JUDGE GONZALEZ: I thought --

2 MR. SCHNEIDER: Excuse me, Your Honor. I, I'm not,
3 I'm not re-forming the sentence. I'm asking what parts of it
4 were stricken. And if we're only going to strike the latter
5 clause, then I, I understood your ruling to be that you
6 weren't going to strike the first clause, that the objection
7 was to --

8 JUDGE GONZALEZ: No. My ruling was I was striking
9 both of the first two sentences, but I -- I mean, I don't see
10 anything on reflection particularly objectionable about -- or
11 nothing objectionable about the first, the first clause,
12 but --

13 MR. SCHNEIDER: I think counsel's concern --

14 JUDGE GONZALEZ: I mean --

15 MR. SCHNEIDER: -- with my statement was that he
16 took what I was saying as to be an acquiescence rather than,
17 you know, preserving the right to take an exception to your
18 ruling. I, I was not doing --

19 JUDGE GONZALEZ: No.

20 MR. SCHNEIDER: -- I was not waiving our right. I
21 was merely trying to facilitate the proceeding by keeping in
22 things that, that you didn't intend to strike, and I apologize
23 to counsel if he thought differently.

24 JUDGE GONZALEZ: All right. I, I will leave in the
25 first portion of, of that first sentence which reads, "I knew

1 that..." -- we better remove the word "because." "I knew that
2 SJI owned 51 percent of LaStar while United States Cellular
3 owned only 49 percent." Any further objections?

4 MR. HARDMAN: Yes, Your Honor.

5 MR. EMMONS: And then, Your Honor, we are excluding
6 the rest of that sentence and all the ensuing sentence?

7 JUDGE GONZALEZ: That's correct.

8 MR. EMMONS: Okay. Thank you.

9 MR. HARDMAN: Paragraph 57 on page 26, and the -- it
10 -- well, that in particular is purely argumentative.

11 JUDGE GONZALEZ: I'm sorry?

12 MR. HARDMAN: That is purely argument, conclusory
13 argument on ultimate issue. It is not probative testimony.

14 JUDGE GONZALEZ: But how are we going to get -- how
15 is he going to make that statement on the record if you don't
16 leave it in his direct testimony?

17 MR. HARDMAN: Well, in the next paragraph --

18 JUDGE GONZALEZ: Well, I mean, it's self-serving
19 obviously and --

20 MR. HARDMAN: -- he goes on to --

21 JUDGE GONZALEZ: -- you know, the record will
22 determine whether or not it's correct. But --

23 MR. HARDMAN: Well, with that understanding --

24 JUDGE GONZALEZ: Yeah. It's, it's just -- it's
25 obviously a self-serving statement. I mean, we'll grant that.

1 Whether or not it turns out to be the correct one, well, the
2 record will determine.

3 MR. SCHNEIDER: We understand, Your Honor, that just
4 because something serves -- is self-serving it doesn't make --

5 JUDGE GONZALEZ: Doesn't --

6 MR. SCHNEIDER: -- it untrue.

7 JUDGE GONZALEZ: Well, granted, but that --

8 MR. SCHNEIDER: Okay.

9 JUDGE GONZALEZ: That is quite clear, yes. So, it
10 will -- are you withdrawing your objection? Is that it?

11 MR. HARDMAN: I'll withdraw my objection.

12 JUDGE GONZALEZ: All right. Any further objections?

13 MR. HARDMAN: No, Your Honor. That concludes my
14 objections.

15 JUDGE GONZALEZ: All right. I hear no further
16 objections. I think we can now move to receive the exhibit?

17 MR. EMMONS: Yes. I think I had moved it though
18 already, Your Honor.

19 JUDGE GONZALEZ: Oh, had you already? I'm sorry.
20 All right. Well, then, hearing no further objections, the,
21 the proposed exhibit is received along with tabs A through Z,
22 I believe. Is that correct?

23 MR. EMMONS: That's correct, Your Honor.

24 JUDGE GONZALEZ: All right.

25 (Whereupon, the document marked for

1 identification as TDS/USCC Exhibit
2 No. 2 was received into evidence.)

3 JUDGE GONZALEZ: That's -- I gather this would be a
4 good time to break for lunch, is that correct?

5 MR. EMMONS: Yes. It would be fine, Your Honor.

6 JUDGE GONZALEZ: All right. What -- does anyone
7 need more than an hour? All right. Well, then why don't we
8 reconvene at quarter of two?

9 (Whereupon, at 12:45 p.m. the lunch break ensued.)

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A F T E R N O O N S E S S I O N

(1:48 p.m.)

JUDGE GONZALEZ: All right. Mr. Emmons, if you'll continue, sir?

MR. EMMONS: Thank you, Your Honor. We next ask that you identify for the record TDS/USCC Exhibit 3, the direct written case testimony of John A. Brady, Jr., consisting of 14 pages of text with a covering declaration dated February 6, 1995, and including tabs A through E.

Tab A is a compilation of telephone records totalling 90 pages. Tab B --

JUDGE GONZALEZ: All right. And B?

MR. EMMONS: Tab B is a summary in chart form of aspects of those telephone records, and that is three pages.

JUDGE GONZALEZ: All right.

MR. EMMONS: Tab C is one page, a letter November 13, 1987.

JUDGE GONZALEZ: All right.

MR. EMMONS: Tab D is a two-page letter dated December 2, 1987.

JUDGE GONZALEZ: All right.

MR. EMMONS: And Tab E is a letter, two pages, dated June 12, 1990, with an enclosure which consists of an additional five pages, so that the exhibit totals seven pages long.

1 JUDGE GONZALEZ: All right. It's identified with
2 those tabs.

3 (Whereupon, the document referred to
4 as TDS/USCC Exhibit No. 3 was marked
5 for identification.)

6 MR. EMMONS: And at this point then, Your Honor, I
7 would move that TDS/USCC Exhibit 3 and its tabs into evidence.

8 JUDGE GONZALEZ: All right. Mr. Weber, are there
9 any objections?

10 MR. WEBER: Yes, Your Honor, I do. Starting with
11 paragraph 8, I object to the final two sentences of that
12 paragraph. This is a statement of Mr. Brady's beliefs and Mr.
13 Brady is not a USCC or TDS witness.

14 JUDGE GONZALEZ: That's paragraph 8 beginning with
15 the sentence "Because SJI..." --

16 MR. WEBER: Yes.

17 JUDGE GONZALEZ: -- continue through, counsel?

18 MR. WEBER: Through the end of the paragraph.

19 JUDGE GONZALEZ: All right. I'll just read the
20 paragraph over quickly.

21 (Pause to review the document.)

22 JUDGE GONZALEZ: And the nature of your objection
23 again, please?

24 MR. WEBER: Is that this is irrelevant because it's
25 a statement of Mr. Brady's beliefs and Mr. Brady is not a USCC

1 or TDS witness and his candor has not been called into
2 question in this proceeding.

3 JUDGE GONZALEZ: Mr. Emmons?

4 MR. EMMONS: Your Honor, this evidence corroborates
5 the belief of the U.S. Cellular principals that SJI was aware
6 of the assistance that U.S. Cellular was performing at the
7 request of Mr. Belendiuk for the LaStar application and that
8 he would -- and that SJI authorized U.S. Cellular to perform
9 that assistance. Both of those aspects of the state of mind
10 of U.S. Cellular are relevant to whether or not they felt that
11 they were in control of, of LaStar. So, this corroborates the
12 plausibility of their beliefs that they were not in control.

13 JUDGE GONZALEZ: I'm not sure I really followed
14 that. I'm sorry. Could you repeat that argument?

15 MR. EMMONS: Yes, Your Honor. The essential issue
16 in the case before us is, is, since it goes to state of mind,
17 is whether U.S. Cellular believed or understood that U.S.
18 Cellular was in control of LaStar rather than the majority
19 partner being in control of LaStar. And the testimony at
20 issue here is testimony by the majority partner explaining
21 that, that the majority partner was aware that LaStar's
22 counsel was making requests for assistance to U.S. Cellular
23 and that the majority partner authorized LaStar's counsel to
24 do that and thereby authorized U.S. Cellular to perform that
25 assistance. That, that evidence corroborates the plausibility

1 of U.S. Cellular's state of mind that it understood that SJI
2 had authorized these things and was aware of these things.

3 JUDGE GONZALEZ: Mr. Weber?

4 MR. WEBER: I guess I'm unsure about how what one
5 party believed corroborates what another party believed when
6 we don't really have any proof that the second party knew what
7 the first party believed. I mean, we, we have no proof that
8 Mr. Nelson or Mr. Goehring or any of the other USCC witnesses
9 knew that, that this indeed was Mr. Brady's belief.

10 MR. EMMONS: Well, we, we have a good deal of
11 evidence in the record that Mr. Nelson was aware that LaStar's
12 counsel, Mr. Belendiuk, was communicating with SJI. That --
13 there is independent documentary evidence that will, will
14 demonstrate that. And, and this confirms those kinds of
15 communications. This is simply further confirmation by the,
16 by the parties to those communications that those
17 communications did in fact take place.

18 JUDGE GONZALEZ: But there is no indication in that
19 paragraph that in fact the -- that, that belief was
20 communicated.

21 MR. SCHNEIDER: Your Honor, in context I think it
22 might. We have a simple statement, that is that the USCC
23 witness's belief that SJI was aware of and in support of the
24 assistance that it gave whenever it was asked for it. What we
25 have here is a meeting, and, and it's more fully discussed not

1 only in this testimony in prior paragraphs but in other
2 people's testimony, where all of the principals were present,
3 where Mr. Carlson, who is TDS's Chairman, offered the
4 assistance in front of the SJI principals, and where the
5 context of that meeting would establish that, that in front of
6 Mr. Nelson Mr. Carlson made assistance available and in front
7 of Mr. Brady and Mr. Crenshaw that assistance was offered.
8 And in context, this statement will, will demonstrate why Mr.
9 Nelson might reasonably have believed that, as Mr. Brady
10 stated, he fully expected Mr. Belendiuk to use those resources
11 available to him.

12 MR. WEBER: Okay. But the Bureau is not objecting
13 to the statement that Mr. Carlson offered the assistance. The
14 Bureau can agree that there is probative value in that. It's
15 just we have opposition to Mr. Brady's state of mind. I, I
16 just don't see how it advances the record.

17 MR. SCHNEIDER: Well, I think to the extent that Mr.
18 Nelson has made, has made statements about what he believed
19 Mr. Brady's state of mind was, that is, in agreement and
20 understanding that USCC would provide assistance when
21 requested, the fact that Mr. Brady actually believed that
22 would tend to corroborate that.

23 JUDGE GONZALEZ: No, I, I agree with the Bureau. I,
24 I don't think it should be part of the, the record and it's
25 stricken. That is the last, the last two sentences of that

1 paragraph, that is paragraph 8. Any further objections?

2 MR. WEBER: Yes, Your Honor. In paragraph 9,
3 everything after the first sentence, really the same objection
4 as in paragraph 8, that this is stating Mr. Brady's state of
5 mind and it's not probative of the designated issue.

6 MR. EMMONS: Well, once again, Your Honor, this --
7 oh, I'm sorry. Do you want to read it?

8 (Pause.)

9 JUDGE GONZALEZ: Sir?

10 MR. EMMONS: Yes. There is other testimony from
11 other witnesses, particularly Mr. Belendiuk and Mr. Nelson. I
12 think that they believed that Mr. Roy Carlson, who was the
13 Chairman of TDS but was not one of the members of the LaStar
14 Management Committee, that, that they understood that when Mr.
15 Carlson spoke for TDS and U.S. Cellular at meetings that
16 involved LaStar that he was effectively speaking and, and
17 acting as a member of the Management Committee even though he
18 formally was not. That's a relevant point and, and their
19 state of mind on that is certainly relevant. And this is Mr.
20 Brady's testimony, that that was also his perception, and this
21 we believe is relevant, the fact that Mr. Brady had the same
22 perception, Mr. Brady who himself was a member of the
23 Management Committee, and he had the same perception that Mr.
24 Carlson when he was involved was effectively functioning as a
25 member of the Management Committee. That confirms the

1 | plausibility of Mr. Nelson's testimony that he had the same
2 | belief. In other words, it can't be thought to be inherently
3 | implausible that Mr. Nelson had that belief if someone else
4 | who was involved in the same activities and events from, from
5 | his own perspective had the same, the same understanding.

6 | JUDGE GONZALEZ: Yeah. I guess I'm having trouble
7 | following you. In other words, the belief was that Roy
8 | Carlson was speaking for USCC and TDS?

9 | MR. EMMONS: That's correct, even though not a
10 | member of the Management Committee.

11 | JUDGE GONZALEZ: Oh, they're not a member of the
12 | Management Committee. And what is the relevance of that --

13 | MR. EMMONS: Well, in a --

14 | JUDGE GONZALEZ: -- with respect to the issues that
15 | we've kept?

16 | MR. EMMONS: Well, in the -- when we -- in the
17 | Motion for Summary Decision that was filed was one of the
18 | LaStar Pleadings that was filed in the proceeding and as to
19 | which the issues in this case revolve around in some respect
20 | the statements made in the Motion for Summary Decision. A
21 | number of statements were made in the Motion for Summary
22 | Decision about the Management Committee and about the --
23 | either the formality or the informality with which it
24 | operated. And I think one of the issues raised in the Bill of
25 | Particulars is whether the Motion for Summary Decision and

1 other statements by U.S. Cellular principals sought to mislead
2 the Commission about the manner in which and the formality
3 with which the Management Committee operated.

4 And so the state of mind of the U.S. Cellular
5 principals who made those statements and who, if any, who
6 reviewed the Motion for Summary Decision before it was filed,
7 is relevant to say what -- to explain their understanding of
8 how the Management Committee operated, and that includes the
9 role and extent to which Mr. Carlson was involved in the
10 Management Committee or in LaStar management type issues. And
11 so it is relevant that Mr. Nelson understood that Mr. Carlson,
12 although not formally on the Management Committee, may have
13 been effectively functioning as a member of the Management
14 Committee --

15 JUDGE GONZALEZ: In other words, it's your argument
16 this is just another indication how informal that Management
17 Committee operated?

18 MR. EMMONS: Yes. And that it explains Mr. Nelson's
19 understanding of why statements made in his declaration and
20 the Motion for Summary Decision that refer to the Management
21 Committee were truthful statements even though some of the
22 instances referred to really involved Mr. Carlson's activity
23 rather than Mr. Nelson's activity. He regarded Mr. Carlson,
24 as he says here -- I'm sorry, as he said in his testimony --
25 he regarded Mr. Carlson as effectively a member of the

1 Management Committee when Mr. Carlson got involved.

2 And what this testimony by Mr. Brady is saying is
3 the same thing, that Mr. Brady had that very same
4 understanding. In other words, which makes it more plausible,
5 which makes it more plausible for the -- for the Commission to
6 find that that was indeed Mr. Nelson's understanding, as he
7 says.

8 MR. SCHNEIDER: Perhaps there is a way to make this
9 a little simpler, Your Honor. There is a question as to
10 whether or not witnesses were truthful when they talked about
11 the functioning of the Management Committee. Mr. Carlson
12 appeared at some meetings that people felt should have been --
13 would have been classified as Management Committee meetings.
14 This testimony goes to show why all the parties didn't draw an
15 important distinction between Mr. Carlson or anybody else who
16 was technically called a "member of the Management Committee,"
17 and that's because, as the witness says, the members of the
18 Management Committee used Mr. Carlson just as he's described
19 here, and that's why the testimony would be relevant when we
20 start to argue about representations made about the
21 functioning of the Management Committee and the members who --
22 and the people who participated in meetings.

23 JUDGE GONZALEZ: Is it in dispute whether or not the
24 -- it was -- these meetings were conducted formally or
25 informally or whether there were persons other than Management

1 members there?

2 MR. SCHNEIDER: At different levels of dispute, Your
3 Honor. We're not disputing that it was operated informally.
4 In fact we have said repeatedly it wasn't operated formally.
5 The implications that are drawn from statements that were made
6 about the function of the Management Committee is really
7 what's at issue here. And so I would say that to some degree
8 there are disputes about statements that were made to describe
9 the functioning of the Management Committee. One of the
10 aspects that can be -- that will have to be looked at to
11 determine whether the witnesses were being candid was their
12 perception of Mr. Carlson and the other individuals with
13 United States Cellular and their roles with respect to
14 meetings which were -- whether they were termed Management
15 Committee meetings or not is not really relevant -- but as
16 they were described in the testimony during the LaStar
17 proceeding.

18 MR. WEBER: Well, Your Honor, the Bureau will
19 certainly not have any objection to any USCC witness stating
20 their belief what Mr. Carlson's role was in any meeting. We
21 just object to having a non-USCC witness whose candor is not
22 in question at this proceeding stating their state of mind
23 when there is no evidence that this state of mind was conveyed
24 to anybody at USCC. I just fail to see the relevance.

25 MR. SCHNEIDER: But not all of the statements you're

1 moving to strike, counsel, are statements about state of mind.
2 In the second sentence is "not only was this evident from the
3 Chicago meeting, but I knew that Mr. Carlson was the senior
4 executive TDS and USCC..." -- "...thus I accepted his views as
5 representing the position of TDS and USCC on LaStar matters."
6 It is a fact. He did that. And it corroborates the views of
7 -- Mr. Brady, after all, was a Management Committee member and
8 it corroborates the view of Mr. Nelson, or it is part of the
9 entire story. No person's state of mind can be evaluated in a
10 vacuum. And, and the testimony of the people who surrounded
11 those witnesses at the time will be relevant to whether or not
12 their testimony is credible about what they believe.

13 JUDGE GONZALEZ: I guess there's some merit to that
14 argument. I don't know how much weight, really, in the end it
15 will carry, but I guess that's something that could be argued.
16 So I'll overrule the objection and we'll, we'll keep that -- I
17 believe it's three sentences. Any further objections?

18 MR. WEBER: Yes, Your Honor. Paragraph 10, I would
19 move to strike the first three sentences, again on the basis
20 that it's irrelevant. So strike from "I also contemplated" up
21 to the sentence at the end, "there's no need for formal
22 meetings."

23 JUDGE GONZALEZ: All right.

24 MR. EMMONS: Well --

25 JUDGE GONZALEZ: Excuse me. If I could just read